

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

HIEP HUY NGUYEN,
Petitioner,

v.

JOSIE GASTELO,
Respondent.

Case No. 16-cv-5528-NJV (PR)

**ORDER FOR PETITIONER
TO SHOW CAUSE**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a 1998 conviction in Santa Clara County, so venue is proper here. *See* 28 U.S.C. § 2241(d). Petitioner has paid the filing fee and has consented to the jurisdiction of a Magistrate Judge.

However, court records indicate that petitioner already filed a habeas petition in this court challenging the same conviction. *See Nguyen v. Veale*, Case No. 06-cv-4198-MJJ. Petitioner's case was dismissed with prejudice as barred by the statute of limitations. This appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2).

This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by

1 clear and convincing evidence that, but for constitutional error, no
2 reasonable factfinder would have found the applicant guilty of the
underlying offense.

3 28 U.S.C. § 2244(b)(2).

4 “Before a second or successive application permitted by this section is filed in the district
5 court, the applicant shall move in the appropriate court of appeals for an order authorizing the
6 district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). It does not appear that
7 petitioner has received authorization from the Ninth Circuit to file this petition, therefore he will
8 be ordered to show cause why this case should not be dismissed.

9 **CONCLUSION**

10 1. Petitioner must show cause within **twenty-one (21) days** of the date of service of this
11 order why this case should not be dismissed as successive. Failure to file a response will result in
12 this case being dismissed.

13 2. Petitioner must keep the court informed of any change of address and must comply with
14 the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for
15 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*,
16 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

17 **IT IS SO ORDERED.**

18 Dated: November 9, 2016



19 NANDOR J. VADAS
20 United States Magistrate Judge
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